IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 5210/2006
(Choukha Ram Vs. State of Rajasthan & Ors.)

Date of Order : 19/03/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. K.R.Choudhary for the petitioner.
Mr. B.L.Tiwari, Deputy Government Advocate for respondents.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioner has challenged the order Annex.P-2 dated 3.5.2005 denying the payment of un-utilized leave to the credit of the petitioner on the ground that such payment is not payable to the persons who have retired compulsorily.

A reply to the writ petition has been filed by the respondents. Learned Deputy Government Advocate submits that the petitioner has retired on 28.11.2000 and Rule 91B (1) of the Rajasthan Pension Rules has been amended by Notification dated 20.8.2001 much after the retirement of the petitioner.

Learned counsel for the petitioner submits that Rule

91B (1) of the Rajasthan Pension Rules does not apply to the case of the petitioner for the reason that the note below the said Rule clearly provides that the benefit under this sub-rule shall not be admissible to the Government Servants retired compulsorily as a measure of penalty under the Rajasthan Civil Services (CC&A) Rules, 1958, whereas the petitioner has not been retired compulsorily under the CCA Rules, therefore, the petitioner is entitled for such benefit. Counsel for the petitioner has relied on a Division Bench decision of this Court in Deen Dayal Khunteta Vs. The State of Rajasthan an Another RLW 1995 (1) Raj. 419 wherein it has been held that if Rule 91 (B) provides for cash payment in lieu of unutilised privilege leave due on the date of retirement to the employee covered under Rule 244 (1) then why should it be denied to those employees who retired under sub-rule (2) of Rule 244 of the Rules. The object of providing cash payment of unutilised leave is that the Government servant who retires from service may have some cash in his hand to arrange his affairs after retirement. It was further held that the petitioner therein though was compulsorily retired under Rule 244 (2), is also entitled to the benefits contained under Rule 91 (b) giving benefit to the employees who sought voluntary retirement under Rule 244 (1) of the Rules. Accordingly, the respondents therein were directed to grant the cash payment in lieu of unutilised privilege leave to the petitioner

therein for the number of days permissible under Rules within a period of three months.

In my view, the controversy stands concluded by the decision of Division Bench of this Court referred supra and therefore, the writ petition deserves to succeed.

In the result, the writ petition is allowed. The order Annex.P-2 dated 3.5.2005 is set aside and the respondents are directed to grant the cash payment in lieu of unutilised privilege leave to the petitioner for the number of days permissible under Rules within a period of three months from today. No order as to costs.

(H.R.PANWAR),J.

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